IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

WP(C).No. 24620 of 2006(E)

OS.513/2004 of MUNSIFF COURT, PARAVUR

PETITIONER:

MRS.MOLLY JOSEPH, W/O.K.V.JOSEPH,
AGED 64 YEARS, RESIDING AT KADEPARAMBIL HOUSE,
THRIKKANARVATTOM DESOM, ERNAKULAM VILLAGE,
KANAYANNOOR TALUK, PACHALAM, KOCHI-12.

BY ADV. SRISHIJU VARGHEESE
SRI.DILEEP VARGHESE
SRI.C.S.YESUDAS
SMT.M.J.SAJITHA
SRI.P.F.THOMAS (SR.)

RESPONDENTS:

1. MRS.MARY JACOB, W/O. JACOB,
KUNNEMBUVEETTIL, AGED ABOUT 54, NOW RESIDING AT
METTEKKATTU HOUSE, BUILDING NO.3/109 OF THE
ELOOR PANCHAYAT, ELOOR, THEKKUMBHAGAM KARA,
VARAPUZHA VILLAGE, ELOOR.

2. JACOB, S/O.VARGHESE,
AGED 58, KANNAMBU VEETTIL, RESIDING AT
METTEKKATTU HOUSE, BUILDING NO.3/109 OF THE
ELOOR PANCHAYAT, ELOOR THEKKUMBHAGAM KARA,
VARAPUZHA VILLAGE, ELOOR.

BY ADV. SRI.M.S.UNNIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/11/2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1:- True copy of the plaint in O.S.No.513/04 of the Munsiff's Court, North Paravur dated 7.7.2004.

Ext.P2:- True copy of the Amendment Application No.I.A.591/06 in O.S.513/04 of the Munsiff's Court, North Paravur, dated 13.3.2006.

Ext.P3:- True copy of the order in I.A.No.591/2006 in O.S.No.513/04 of the Munsiff's Court, North Paravur, dated 15.7.2006.

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.24620 OF 2006

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Dated this the 21st day of November,2006

JUDGMENT

Petitioner is the plaintiff in O.S.513/04 on the file of Munsiff Court, North Paravur. Respondents are the defendants. Suit was filed for recovery of possession. Court fee has to be paid and suit is to be valued, as provided under section 30 of the Kerala Court-Fees and Suits Valuation Act,1959. Under section 30, court fee shall be computed on the market value of the property or at the rate of rupees one thousand whichever is higher. The market value has to be computed as provided under section 7 of the Act. Under sub section (2) of Section 7, in a suit for recovery of possession market value of the property, if it is an agricultural land, shall be deemed to be ten times of the annual gross profits of such land where it is capable of yielding annual profits,

minus the assessment if any made to the Government. It is to be computed as provided under Section 3A, only if the suit does not fall under clause (2) or clause (3). The plaint was valued at Rs.10,000/- and mesne profits was claimed at Rs.300/- per month. When the office raised an objection with regard to the sufficiency of the court fee, petitioner filed I.A.591/06 under Order VI Rule 17 of Code of Civil Procedure to amend the plaint showing the valuation at Rs.33,000/- instead of Rs.10,000/- and consequential change in the court fee paid. Under Ext.P3 order it was dismissed holding that court is suspicious of the valuation. Hence petitioner was directed to produce satisfactory and reliable evidence.

2. This petition is filed challenging Ext.P3 order, contending that court below should have allowed the application for amendment as sought for and sufficiency of court fee and valuation has to be determined only thereafter. There is force in the submission made by the learned counsel appearing for the petitioner. The correctness of the amended plaint, after the proposed amendment,

need not deemed to be considered when an application under Order VI Rule 17 is filed. In the original plaint the valuation was shown at Rs.10,000/-, without giving any data. The plaint was sought to be amended incorporating the details and valuing the property as provided under section 7(2) of the Act. If it is an agricultural land, then the amendment sought for is proper and petitioner may not be liable to pay any excess court fee than what has been stated in Ext.P2 application. But that is a matter to be decided by the trial court after allowing the plaintiff to amend the plaint.

3. Ext.P3 order is quashed. Trial court is directed to permit petitioner to amend the plaint as prayed for in Ext.P2 application. The court may decide sufficiency of the valuation and court fee paid thereafter.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-